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Legal DEPARTMENT

A BRANCH

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Subject:— Criminal Appeals in the High Court of Bombay against the order of the acquittals from Kanara District-

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Ex. S. 61

In the Court of the Sessions Judge of Kanara,
At Karwar.

Sessions Case No. 5 of 1946.

I m p e r a t o r.

Versus.

Bhujangnaik Nagappa Naik ... ... Accused.

The Public Prosecutor for the Crown.

Mr. K.R.Haldipurkar, pleader for the accused.

Offences :- Sections 409, 193 and 477 of the Indian Penal Code.

.....

J u d g m e n t.

The accused, Bhujang Nagappa Naik, has been charged with an offence of criminal breach of trust as a public servant on March 24, 1944 in respect of Rs.2000/- advanced to him from the Mamlatdar's office, Karwar, for the purchase of rice and paddy. Further, he is charged with an offence of fabrication of false diaries for the two fortnights ending on March 15, 1944 and March 31, 1944 in order to conceal the said criminal breach of trust and furthermore he is charged of fraddulent destruction of the requisition for Rs.2000/- dated March 24, 1944 and the L.P.G. 4 and thereby committed offences under sections 409, 193 and 477 of the Indian Penal Code.

2. The facts of the prosecution case are briefly as follows. The accused was Circle Inspector of Baad from June 2,1943 to June 10, 1944 and in that capacity he was also working as a Grain purchasing Officer under the scheme sanctioned by the Govt. The Mamlatdars of talukas held certain allotments made by the Collector and the said allotments used to be credited into the book named I.P.G. 5. Advances were made from the said allotment to the Circle Inspectors, Shanbhogs, and Aval Karkuns, who were entrusted with the duty of purchasing grain, to purchase paddy and rice on behalf of Government. The Mamlatdars used to advance the sums through the Treasury Head Karkun on requisitions made by these purchasing officers. On March 23, 1944, the Mamlatdar of Karwar received an allotment of Rs.25,000/-. On March 24, 1944 a total amount of Rs.12050/- was advanced to different grain purchasing officers including the present accused to whom a sum of Rs.2000/- was advanced for the purpose. At the time of the said advances detailed entries were made in the register called I.P.G. 4 in respect of the names and the sums. I.P.G. means a ledger for purchase of grains. Further the signatures of the purchasing officers to whom they were disbursed were taken therin. The advances were made by the Head Karkun through the shroff either to the purchasing officer or to a messenger duly authorised by him to receive the said amount. A heavy season for purchasing grain was from February to the end of May every year. It was alleged by the prosecution that the accused failed to account for the sum of Rs.2000/- advanced to him on March 24, 1944.

3. Then, it was noticed that the accounts of the supply branch in the Kanara district were not in proper order and hence the Senior Auditor Mr.Bankapur was asked to get them re-written under his supervision. The said

work of re-writing the accounts was undertaken in the months of April to June 1944. At that time Mr. Bankapur found that details of certain entries were not made in L.P.G. 5 and hence he entered them in L.P.G. 5 from the register L.P.G. 4 for the guidance of the purchasing officers. The entry dated March 24, 1944 made in L.P.G.4 indicated that a sum of Rs.2000/- was advanced to the accused along with others on that day and the details of the entries of that date were made by Mr.Bankapur in L.P.G.5.

4. Thereafter in August or September 1944 the clerk Habbu in the Mamlatdar's office, Karwar, was asked to prepare L.P.G. 7 and then he found that L.P.G. 4 was missing In September or October 1944 the Head Accountant Supply Department D.N.Baadkar was ordered by the Commissioner to re-write the accounts of Karwar Taluka supply branch as they were not in a proper order., Then, he found that the requisition for Rs.2000/- dated March 24, 1944 given by the accused was missing. However, he noticed a note in L.P.G.5 made by Mr. Bankapur that Rs.2000/- were paid to the accused. By that time the accused was serving as a clerk in the Prant Office, Sirsi Division. The head-accountant Mr.Baadka sent for him twice but he did not turn up. Subsequently the accused met him and the latter questioned him about Rs.2000/- . The accused replied that he had not received the said sum. In December 1944 the head-accountant made a report to the Collector about the missing register and the requisition. In the said month the accused was found very active in making enquiries with the clerk, shanbhog and Circle Inspector of Baad in respect of the old records and diaries. Although the Prant Officer of S.D. was on tour at that time, the accused had come to Karwar and was found to be in the Karwar Division Prant Office near the shelf where the diaries of the Circle Inspectors were placed.

5. Subsequently the P.O.K.D., held a departmental enquiry in respect of defalcation of Rs.2000/- by the accused from May 19. 1944 to May 23, 1944. During the course of the said inquiry he asked his Sheristedar Mr. Divgi to search for the diaries of the accused. On a search Mr. Divgi did not find the diaries of the accused submitted to the Prant Officer from the second fortnight of January 1944 to the first fortnight of April 1944. Then he was asked by the Prant Officer to get the original copies, of the diaries from the Circle Inspector of Baad. Accordingly, the original copies of diaries Exs. 17, 18 and 34 to 36 were got produced. It is alleged by the prosecution that the original copies Exs. 17 and 18 have been fabricated by the accused with a view to conceal his criminal breach of trust in respect of the amount of Rs.2000/-.

6. Thereafter on August 24, 1945 the Mamlatdar of Karwar Mr. Ghavan lodged the complaint Ex. 19 before the police Sub-Inspector, Karwar, against the accused for the offences of criminal breach of trust and fabrication of false evidence under section 409, 193 and 465 of the Indian Penal Code. The then P.S.I. Karkhanis registered the offences and started investigation. On September 2, 1945 he recorded the statement of the clerk A.D. Shaikh. On September 5, 1945 he recorded the statement of [illegible] M.S. Naik. On September 6, 1945 he recorded the statement of Deivgi and H.M.Naik. On September 8, 1945 he recorded the supplementary statement of A.D.Shaikh and the statements of Ganu and Shamba Naik. On September 9, 1945 Balekar Shanbhog. On September 27, 1945 he recorded M.V.Habbu. On October 2, 1945 he recorded the statement of G.N.Hegde On December 7, 1945 the accused was arrested at Udipi and was enlarged on bail. On January 10, 1945 he submitted the charge-sheet against the accused. Thereafter on April 22, '

on April 23, 1946 he recorded the statement of Mr. Bankapur.

7. The plea of the accused is not guilty. His case is one of innocence. He denies the payment of Rs.2000/- alleged to have beenp paid to his messenger on March 24, 1944. Further, he denies the alleged fabrication of the false evidence as well as the destruction of the requisition and L.P.G.4. He states that the witnesses for the prosecution being clerks of the department are highly interested and are falsely implicating him with a view to support the departmental case.

8. The points that arise for decision in this case are :

1) Whether the accused was entrusted with a sum of Rs.2000/- on March 24, 1944 as a public servant, as alleged ?
2) whether it is proved that the accused as such a public servant committed a criminal breach of trust in respect of the said amount ?
3) Whether it is established that the accused fabricated diaries for the two fortnights of March 1944, as alleged
4) Whether it is proved that the accused fraudulently destroyed the requisition for Rs.2000/- dated March 24, 1944 sent by him and the L.P.G. 4 containing the entry of the said amount, as alleged ?

9. My findings are :-

1) No.
2) Does not arise.
3) No.
4) No.

Reasons.

10. There is not the slightest doubt that the requisition dated March 24, 1944 made by the accused for Rs.2000/- and the L.P.G. 4 containing the details of the said amount have been destroyed. Similarly, the original diaries Exs. 17 and 18 have been hampered with. At this stage it will be not be out of place to narrate when these different incidents were detected. It is the prosecution case that on March 24, 1944 a sum of Rs.2000/- was advanced by the then shroff in Karwar taluka office A.D.Shaikh Ex. 21 to the accused's massenger who had brought the requisition from him. Thereafter the senior auditor Mr.Bankapur was asked to get the accounts of the supply branch in the Kanara district re-written under his supervision, in as much as they were not in proper order. During the course of re-writing the accounts, Mr.Bankapur made a note on L.P.G.5 Ex. 3 mentioning the details of the names and amounts paid on March 24, 1944 from the register L.P.G. 4. His note indicates that out of an item of Rs.12050/- debited on that date as a payment to the grain purchasing officers, a sum of Rs.2000/- was advanced to the Circle Inspectors Baad. Thereafter in August or September 1944 the clerk in the Mamlatdar's office, Karwar, Habbu found that L.P.G. 4 was missing when he was asked to prepare L.P.G. 7. Later on the Head-accountant of the Supply department D.N.Baadkar, who was ordered by the Commissioner to re-write the accounts of Karwar taluka Supply branch, found that the requisition for Rs.2000/- dated March 24, 1944 given by the accused was missing. In December 1944 he made a report to the Collector of Kanara in respect of the missing requisition and L.P.G. 4 Thereafter the District Magistrate, Kanara, brought to the notice of the Mamlatdar, Karwar, that a sum of Rs.2000/-

advanced to the Circle Inspector, Baad, ie., the accused on March 24, 1944 was not accounted for. In May 1945 the Prant Officer, K.D. , held a departmental inquiry against the accused in respect of the defalcation of Rs.2000/-. During the course of the said inquiry it was found that the diaries of the accused submitted to the P.O. could not be traced in the office and hence the original copies of his diaries Exs. 17, 18 and 34 to 36 were got produced. Then it was detected that the original copies Exs. 17 and 18 for the two fortnights of the month of March 1944 were tampered with. This is in short the history how these missing and fabricated deeds were detected.

11. It is not in dispute that the accused was a Govt. servant in March 1944. It is in evidence that since June 2, 1943 to June 10 1944 the accused was the Circle Inspector of Baad, and as such, he was also entrusted with the work of a grain purchasing officer. After June 10 1944 he was transferred to the P.O.S.D. as a clerk. On these points there is over-whelming evidence both oral and documentary. The documentary evidence consists of the requisitions Exs.4 to 10 ranging from December 9, 1943 to April 11.1944 made by him as well as the registers L.P.G. 3 and 4 Exs 12, 13 and 14 maintained by him. The oral evidence of the main prosecution witnesses, viz., Mr. Chavan the then Mamlatdar of Karwar Ex 2, G.N.Hegde the then head-karkun Ex. 20 and A.D.Shaikh Ex. 21 points to the same conclusion. Thus, there is sufficient evidence to hold that the accused was a Govt. servant in the month of March 1944.

12. The most important question that arises for our decision in this case is whether the accused in his capacity as a public servant was entrusted with a sum of Rs.2000/- on March 24, 1944. It is sought on behalf of the prosecution to prove the factum of payment of Rs.2000/- to the accused on March 24, 1944 by means of direct as well as circumstantial evidence. The direct testimony consists of both oral and documentary evidence. The oral evidence comprises the evidence of two witnesses G.N.Hegde Ex. 20 and A.D.Shaik Ex. 21. The documentary testimony on the pe point consists of the entry made by Mr. Bankapur senior auditor in L.P.G.5 Ex. 3. The circumstantial evidence consists of the testimony of Mr. Bankapur Ex. 30, the clerk Habbu Ex. 31 and the subsequent conduct of the accused. It was urged by the learned public prosecutor for the Crown that both the direct as well as the circumstantial evidence in the case was consistent, natural convincing and credible, that the subsequent conduct of the accused went to corroborate the direct evidence in the case, that the payment was made to the messenger duly authorised by the accused and hence the payment of Rs. 2000/- to the accused was fully established. On the contrary, it was argued by the learned pleader for the defence that the prosecution evidence both direct as well as circumstantial was discrepant on material points, improbable, unnatural and unbelievable, that the subsequent conduct of the accused was consistent with his innocence and did not go to corroborate the evidence of the prosecution witnesses as argued, that it was not proved that the payment was made to a duly authorised agent of the accused and hence the prosecution had failed to establish the main ingredient of the offences.

13. After stating the general the evidence relied on by the prosecution and the grounds of attack advanced by the defence, I shall now proceed to scrutinise it in

in detail. Before doing s , we shall have to clarify certain proved facts in respect of the practice followed by the taluka officers before making payments with a view to understand the arguments properly. The allotment for grain purchase sent by the Collector to the Mamlatdar of Karwar taluka used to remain with the shroff who used to send it to the Huzur treasury for safe custody. Certain Circle Inspector, shanbhogs and Aval-karkuns were entrusted with the duty of purchasing rice and paddy on behalf of the Govt. For this purpose they used to make requisitions to the Mamlatdar of Karwar taluka. The Mamlatdar also used to take advances from time to time for the purpose of purchasing grain. After the requisitions were received the treasury head-karkun used to make an endorsement of "pay" on them and then they were handed over to the shroff to make payments. Thereafter the shroff used to make payments in accordance with the requisitions and make an endorsement on them to the effect "Paid on". Then the shroff used to make the entry mentioning the details thereof in the register called L.P.G. 4 and he also used to take the signature of the messenger if the amount was paid to him. There is another register called L.P.G. 3 maintained at the taluka office and therein the entries regarding the payments of the sale-prices directly made to the paddy owners were made. The daily totals of L.P.G. 3 and L.P.G. 4 were carried over to L.P.G.5. Similarly, the grain purchasing officers also used to maintain accounts in the registars called L.P.G. 3 and 4 in respect of their purchase of grain. Further, these requisitions as well as the registars L.P.G. 4 and 5 used to be in the custody of the Price Inspector and about the month of August 1944 one Chundan Naik was the Price Inspector. This was in short the practice followed by the treasury officer before he made payments to the grain purchasing officers and this practice is testified by Mr. Chavan Ex. 2, the then Mamlatdar of Karwar, G.N.Hegde Ex. 20 the then treasury head-karkun at Karwar and A.D.Shaikh Ex. 21 the then shroff in Karwar taluka office.

14. Now, I shall advert to deal with the evidence on the point of the alleged actual payment of the sum of Rs.2000/- on March 24, 1944. At the outset it may be observed that it is not the prosecution case that the sum was paid to the accused in person on that date; but its case is that the said sum was paid to the messenger authorised by the accused who had brought the requisition dated March 24, 1944 for Rs.2000/- from the accused. On this point the evidence of G.N.Hegde and A.D.Shaikh has been relied on, on behalf of the Crown. Their evidence on the point of the incident of payment as happened on that day is as follows. G.N.Hegde who was a clerk in the Karwar taluka office in March 1944 was acting as treasury head-karkun from March 17, 1944 to April 3, 1944. On March 24, 1944 Hegde received 3 requisitions in writing and one oral requisition from the Mamlatdar. The three requisitions were from the Circle Inspectors of Hankon and Baad and Shanbhog of Kinner. He took those requisitions to the Mamlatdar and obtained his permission to make payments. Then, he handed over the requisitions to A.D.Shaikh the then shroff to make payment. The accused had sent the requisition with a messenger and it was in his hand-writing and was signed by him. Therein it was mentioned that the sum should be paid to the person who had brought it. Then Shaik made the payment to the messenger and took his signature in L.P.G. 4. Shaik told the messenger to approach the head-karkun to acknowledge the receipt of the sum. Accordingly, the messenger went to Hegde and acknowledged the sum before him and went away. The Mamlatdar

had directed the head-karkun to give instructions to the grain purchasing officers to push on with the purchase work, vigorously. The accused had come to the office on the very day at about 5 or 6 p.m. and then the head-karkun told him that the sum was sent that day and that he should carry on the purchase work vigorously as the Mamlatdar had told so. The accused consented to do so. This is the sum and substance of the story told by these two witnesses on the actual entrustment of the sum.

15. Then, if the evidence of these two witnesses is believed, it will have to be held that the payment was made to the agent of the accused duly authorised by him. But, the learned pleader for the defence vehementally challenged the evidence of these two witnesses. It was urged on behalf of the defence that the theory of the paymen to the messenger was clearly and after thought and highly improbable and unnatural and that even if the said theory was believed the prosecution had failed to prove that the payment was made to a duly authorised agent of the accused. To my mind it appears that there is a considerable force in the argument advanced for the defence.

16. In this case it appears that there was a preliminary inquiry held by the District Magistrate, Kanara, in the month of January 1945 before the regular departmental enquiry was held bythe Prant Officer, Karwar Division. In the said preliminary inquiry G.N.Hegde's statement was recorded by the District Magistrate. When he was called upo for statement Hegde took 3 days' time to make a statement on the plea that he wanted to look into the books and then make a statement. Thereafter in his statement before the District Magistrate he has not stated that the payment was made to the accused through a messenger. This omission is important from the defence point of view. Relying on this omission on the learned pleader for the defence urged that the theory of the messenger is an afterthought. Now, if the amount was really paid to the messenger as now alleged before this court, Hegde would have certainly stated so in his statement in the preliminary inquiry. His non-mention of the same at the earliest opportunity after the incident was disclosed is detrimental to the prosecution case. For these reasons to me it appears that the theory of the messenger is clearly an afterthought as urged by the defence pleader.

17. Next, the theory of payment to the messenger appears to be highly improbable and unnatural. According to the evidence of Messrs. Chavan, Hedge and Shaik this was the only instance when the payment was made to a messenger. Not a single instance of payment to a messenger other than the one alleged by them is quoted by them. That being so, it is highly improbable that the payment would have been made to the messenger. The requisitions produced for the Crown in this case point to the same conclusion. Ex. 4 is the receipt passed by the accused when he as the Circle Inspector; while Exs. 5 to 10 are the requisitions made by the accused ranging from December 1943 to April 194 These requisitions coupled with the oral evidence of the two witnesses, viz;Hegde and Shaik clearly go to indicate that on several occasions sums less than Rs.2000/- were advanced to the accused personally. That being so, it is highly improbable to believe that the accused would have sent a messenger to bring such a considerable amount. The view taken by me as above is further fortified by the non-examination of the messenger on behalf of the Crown. Had the payment been made to the messenger as now alleged, he would have been certainly examined on behalf of the pros ecution. Now, no explanation whatsoever is forthcoming as to his non-examination. Mr. Hegde states that he does

does not know the name of the messenger sent by the accused; but he was of his acquaintance. Still this messenger has not been examined in this case and to me it appears that the non-examination of the messenger is detrimental to the prosecution case as urged by the defence.

18. Now, assuming for the sake of arguments without granting that the payment of Rs.2000/- was made to the messenger on the date in question as alleged by the two witnesses, still the prosecution must establish that the messenger was the duly authorised agent of the accused. On this point also there is no sufficient and convincing evidence and if at all the payment was made as alleged, it was made to the messenger and not to the duly authorised agent of the accused. Neither Hegde nor Shaik aver that the name of the messenger was mentioned in the requisition. Their evidence indicates that in the requisition it was mentioned that the sum should be paid to the person who had brought it. Thus, according to their evidence it was a bearer requisition not containing the name of the messenger. This appears to be highly unnatural and improbable. If at all the accused had sent a messenger he would have specifically mentioned his name in the requisition. Further, Shaik admits in his deposition that he did not even care to ascertain the identity of the messenger and he says that he does not remember who had brought the requisition. Perhaps as it was the first occasion when he had to make the payment to a messenger as alleged by him, he would have certainly taken care to get the identity of the messenger ascertained. The evidence of these two witnesses on the point of the theory of payment to the messenger is totally false, improbable, unnatural and unworthy of belief. Further it does not go to establish that the payment was made to an authorised agent of the accused. That being so, there is no sufficient and convincing evidence to prove that a sum of Rs.2000/- was paid on the date in question to the messenger of the accused duly authorised by him and hence there is no proper entrustment of the money to the accused.

19. The view taken by me as above is strengthened by another circumstantial evidence in the case. Ex. 10 is the requisition dated April 11, 1944 made by the accused to the Mamlatdar for payment of Rs.2000/-. In this requisition the accused has stated that he had received till then an aggregate amount of Rs.17,500/- and that a sume of Rs.17,456 and odd had been expended towards the payment of purchase of paddy on behalf of the Government. Mr. Chavan who is the formal complainant in this case states that the details about the receipts and the disbursements of the amount mentioned in Ex. 10 must have been interpolated subsequent to the presentation of the requisition. Further, he states that the total of Rs.17,500/- shown in Ex. 10 does not include the sum of Rs.2000/- alleged to have been advanced on March 24, 1944. Now, there is no corroboration to Mr. Chavan's suggestion on the point. On the other hand, according to the prosecution evidence itself it is probable that the accused might have given the details in Ex. 10 in accordance with the orders of Mr. Kahan the then treasury head-karkun. On this point the evidence of Shamba Naik Circle Inspector Ex. 42 is relevant. Ex. 43 is the requisition made by him dated April 4, 1944 when he was the Circle Inspector of Hankon. Therein he has given the details of the amounts advanced to him as well as the details of the disbursements made by him till the date of his requisition. He avers that the then treasury head-karkun Mr. Khan had asked the grain purchasers to mention the previous items of receipts and the balance and hence he had mentioned the same in Ex. 43. That being so, it is but natural and probable that the accused might have mentioned the details of the advances and the disbursements made by him in the requisition Ex. 10. Hence, there is no force in the suggest

suggestions that this portion might have been added subsequent to the date of the presentation of the requisition.

20. Then, it was urged by the learned pleader for the defence that the amounts received by the accused upto the date of the requisition Ex. 10 were mentioned therein, that the said amounts were scrutinised by the then treasury head-karkun, that the accused would not have dared to omit the item of Rs.2000/- if he had really received it and hence the entries in Ex. 10 go to discredit the prosecution case of payment of Rs.2000/- to the accused. Further, it was urged that Mr. Khan the then treasury head-karkun would have enlightened us on the matter by his evidence, that the prosecution ought to have examined such an important witness and that from the non-examination of such an important witness, an adverse inference should be drawn against the prosecution. To me it appears that there is a considerable force in the arguments advanced for the defence. Ex.10 is the immediately next requisition made by the accused According to the evidence of Mr. Chavan the sum of Rs.2000/- advanced on March 24, 1944 is not included in the aggregate sum mentioned therein. Now, Mr. Khan who made the payment under Ex. 10 should have ascertained whether the amounts mentioned therein as receipts and expenditure were correct o otherwise and if the amount was not correct he would not hav advanced the amount on that date. But the endorsement on Ex. 10 clearly indicates that the amount as prayed for therein was made to the accused on April 11, 1944. Thus it will have be presumed that Mr. Khan was satisfied with the aggregate of the sums mentioned as receipts therein. If it was otherwise Mr. Kahn ought to have been examined on behalf of the prosecution. Perhaps it appears that he may not support the prosecution case as Hegde and Shaik are doing and therefore he has not been examined in this case. Thus, the contents of the requisition Ex. 10 far from supporting the case for the Crown, go to negative the theory of payment of Rs.2000/- on the date in question.

21. After dealting with the direct evidence of the two witnesses relied on for the prosecution, I shall advert to examine the evidence of the other two companion witnesses Mr. Bankapur Ex. 30 and Habbu Ex. 31as well as the note made by Mr. Bankapur in L.P.G. 5 Ex. 3. At the outset it may be observed that the note made by Mr. Bankapur in the register goes to indicate that a sum of Rs.2000/- was advanced to the Circle Inspector, Baad, on March 24, 1944 On that date a total amount of Rs.12,050/- was advanced according to the entries made in L.P.G. 4 which is now missing. The said item of Rs.12,050/- consists of Rs.5000/- paid to the Circle Inspector, Hankon, Rs.50/- paid to the Shanbhog of Kinner, Rs.5000/- paid to the Mamlatdar, Karwar and Rs.2000/- paid to the Circle Inspector, Baad. At this stage it may be observed that the entry made in this register is the foundation of the prosecution case. Now, this entry, was made not during the course of the audit, but during the course of giving instructions at the time of re-writing the accounts of the supply branch. Mr. Bankapur proved these entries and the details thereof made in L.P.G. 5. Now, L.P.G. 4 as well as the requisition dated March 24, 1944 are not forthcoming as they have been destroyed according to the prosecution case. That being so, it is sought on behalf of the prosecution to lead secondary evidence under section 63 of the Evidence Act. According to the evidence of Mr. Bankapur these notes were made on comparison with the entries in the original L.P.G.4 His evidence on the point of comparision is as follows. The details of the entries made in Ex. 3 were not written in the register Ex. 3a although they were required to be written. Hence, he wrote those details in the said regist-

register for the guidance of the clerk. He wrote those detail when the clerk Habbu was reading the entries from the register L.P.G. 4 and then he was holding the requisitions for the purpose of verifications. After the verification he used to write the entries in L.P.G. 5 Ex.3. Thus he testifies to the porcess of comparison. Now, Mr. Bankapur categorically admits that he did not personally see the details of the item referred to above in L.P.G. 4. Further his version about the verification by holding the requisitions in his hand appears to be an afterthought. In February or March 1945 Mr.Saldanha, the Supply Officer, Karwar, had asked Mr. Bankapur in respect of the item of Rs.2000/- in dispute. Then he gave a reply to the supply Officer stating that Habbu used to read the items from L.P.G. 4; but he did not mention therein that he used to verify them with the requisitions. Thus, at the earliest opportunity Mr.Bankapur did not mention about the alleged verification by holding the requisitions in his hand. That being so, his version on the point of the verification appears to be clearly an afterthough as urged by the defence pleader. Thus, the evidence of Mr.Bankapur except the entry made by him, does not much help the prosecution case and he has clearly made these entries when the witness Habbu read out the items from the original register, viz. L.P.G. 4.

22. Now, the evidence of the witness Habbu is in conflict with that of Mr. Bankapur. Habbu avers that he did not read the entries from L.P.G. 4 on March 24, 1944; But Mr. Patil who was the assistant of Mr.Bankapur read the same. On this point Habbu cannot be believed. However, he supports the evidence of Mr. Bankapur or other points. The District Magistrate, Kanara, has launched a prosecution against this witness for criminal misappropriation which is now pending. That being so, this witness is rather reluctant to support the prosecution case. Believing the evidence of Mr. Bankapur to me it appears that Habbu was reading the entries from L.P.G. 4. As Mr. Bankapur made the entries in Ex. 3 after Habbu read them from L.P.G. 4 , it appears that the entries made by Mr. Bankapur in Ex.3 are correct. There is no reason why Habbu should read a false entry from L.P.G. 4 in April or May 1945 when there is no enmity between the accused and the witness. It appears that Mr. Bankapur made the entry in the usual course of his duty and hence the note made by him aprears to be true. Now, if the entry is believed it indicates that a sum of Rs.2000/- was paid to the accused on March 24, 1944.

23. Then, the question arised whether the conviction of the accused can be based on the entry made by Mr. Bankapur. To me it aprears that in the present case it is not safe to base the conviction on the mere entry relied on for the prosecution. The direct evidence of the two witnesses as already pointed out above is unworthy of credit and is inconsistant with the entry referred to above. Further the reading of the entries by Habbu does not exclude the possibility of wrong entries being read out. There is no guarantee that Habbu read the entries correctly from L.P.G. 4. For these reasons to me it aprears that there arises a reasonable doubt as to the guilt of the accused. At any rate, the prosecution has not established the factum of entrustment of the money to the accused beyond any reasonable doubt. For all these reasons I shall have to hold that the payment of Rs.2000/- to the agent of the accused on March 24, 1944 is not proved beyond any reasonable doubt.

24. Next, it was urged by the learned Public Prosecutor for the Crown that the circumstantial evidence in the case, viz., the subsequent conduct of the accused went to corroborate the theory of the payment to the accused's messanger. On the contrary, it was argued for the defence

that the subsequent conduct of the accused was consistent with the rational explanation offered by him that it was not consistent only with his guilt and hence the circumstantial evidence did not go to corroborate the prosecution case. At this stage it may be noted that there is ample evidence on record to prove the ~~xxxxxxxxx~~ activities of the accused in December 1944. It is in evidence that Circle Inspectors used to send diaries every fortnight to Prant Officers through Mamlatdars. In 1944 the Circle Inspectors who were entrusted with the duty pf purchasing grain used to mention in their diaries the progresse of grain purchasing work. In December 1944 the Prant Officer, S.D. in whose office the accused was working as a clerk, was on tour. Then the accused alone had come to Karwar and questioned the clerk M.S.Naik Ex. 27 where the keys of Karwar Prant Office were as he wanted to see his diaries saying that Rs.2000/- were wrongly debited in his account in the taluka office. Naik replied that the keys might be at the treasury gate or might have been taken on tour. Further he told him to see the original diaries which were with the Circle Ihspector of Baad.. After some days ihe the same month the Prant Officer, K.D. had come to Karwar with his Dafedar the witness Ganu Madu Ex. 37. The accused asked Ganu to open the office of Karwar Prant and accordingly he had opened the same. Then Naik saw the accused standing near a cupboard in the eastern room of Karwar Prant Office. After seeing the clerk Naik, the accused came out. Thus, the evidence of Naik and Ganu goes to prove that the accused had visited Karwar twice in the month of December 1944 and was searching for the diaries submitted by him as the Circle Inspector of Baad. In my opinion, their evidence does not take the prosecution case any further. The learned pleader for the accused has offered an explanation in this connection which appears to be reasonable. The accused wanted to see the diary for the purpose of ascertaining where his camp was on the date of the alleged offence. This explanation seems to be rational. In the first place this explanation was given by the accused to the witness Nik himself. As there was a rumour that the accused had misappropriated a sum of Rs.2000/- it is probable that he might be searching for the diaries to ascertain his camp on March 24, 1944. Thus the subsequent conduct of the accused in this respect does not necessarily go to prove his guilt, but it is consistent with the reasonable explanation offered by him.

25. Then, I shall advert to consider the second piece of circumstantial evidence relied on for the prosecution. The said evidence consists of the depositions of the witnesses Laxman Shenvi Ex. 28 and Shamba Naik Ex. 42. The witness Shenvi was the Circle Inspector of Baad from January 1944 to May 1946. The accused had met him in December 1944 near the Gramchavdi and questioned him as to who was in charge of Baad circle. Being questioned he told him that he wanted to see the diaries of the Circle Inspector and thereupon Shenvi replied that the charge was with the witness Shamba Naik. Similarly, he had met the witness Shamba Naik who was the then Circle Inspector of Kinner in April 1945 and questioned him whether he had the old hand-delivery book regarding Baad Circle. Now, the inquiry made by the accused with these two witnesses does not necessarily go to suggest that the payment of Rs.2000/- must have been made to the messenger sent by the accused as stated by the two witnesses for the prosecution.

26. Then, what nature of the circumstantial evidence is necessary to bring homee the guilt to the accused is laid down in the case of Emperor v. Basangouda Yamanappa, 43 Bom. L.R. 144. Therein it is held as follows :- "Circumstantial evidence must be consistent, and consistent only with the guilt of the accused; if the evidence is consistent with

with any other rational explanation then there is an element of doubt of which the accused must be given the benefit. On of the circumstances which has to be taken into account is the fact that the accused has offered no explanation, or has offered a particular explanation; but it must be borne in mind that the accused cannot go into the witness-box, and is not bound to give any explanation at all. The fact that he does not open his mouth cannot be used against him. Often the accused is an illiterate person, and makes a statement under section 342, C.P.C., which is obviously untrue, or he is not prepared to admit anything. It is the duty of the counsel in defending an accused to point out that the evidence is quite consistent with an explanation which fits in with the accused's innocence. Where the accused is not represen-ed, or not properly represented, the Judge is bound to ask himself whether there is any rational explanation of the evidence which is consistent with the innocence of the accused, and if there is, he is not justified in convicting. A reasonable explanation of the evidence should not be rejected because not offered by the accused." Thus, according to this dictum the circumstantial evidence must be consistent and consistent only with the guilt of the accused. But if the evidence is consistent with any other reasonable explanation, then there arises a doubt the benefit of which must be given to the accused. Applying this test to the circumstantial evidence relied on in this case, in my opinion, the circumstantial evidence in the case is not consistent only with the guilt of the accused, but it admits of a reasonable explanation and hence there arises a doubt the benefit of which must go to the accused. For these reasons to me it appears that the circumstantial evidence in the case does not necessarily go to supprt the theory of payments of Rs.2000/- to the messenger of the accused alleged.

27. In view of my finding on the first point, the second point, viz., whether the accused as a public servant misappropriated the amount of Rs.2000/- does not survive for consideration.

28. Then, I shall proceed to examine the evidence on the other two charges, viz., fabrication of false diaries and the destruction of requisition dated March 24, 1944 and the register L.P.G.4 with a view to conceal the offence of criminal misappropriation. In this case the main charges was of criminal breach of trust in respect of the amount of Rs.2000/- and on this point I have found against the prosecution. That being so, the other two charges which are dependant on the first charge loose their importance. At the outset it may be observed that there is no sufficient and satisfactory evidence to establish these two charges. The evidence on these two charges is merely inferential. It mainly consists of the accused's inquiry with the four witnesses mentioned above. No doubt, there is abundant evidence on record that on March 24, 1944 there was a requisition given by the accused for payment of Rs.2000/- and that subsequently it is missing. Similarly the register L.P.G. A is also missing. These documents used to be in possession of the Price Inspector Chundan Naik. Now, there is absolutely no evidence on record to show how the accused came in possession of these documents and how he destroyed them. That being so, there is no evidence at all to establish this charge.

29. Now, the evidence with respect to the fabrication of false diaries is simply inferential. The witness Palekar who was the shanbhog of Baad in 1944 states that the Circle Inspector of Baad had a big box and a small

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small box and that they were kept ~~in~~ first in the patil's room in the Gramchavdi and thereafter in July 1944 they were shifted in his room. The evidence of Palekar and Shamba Naik indicates as follows. The big box contained the record of the Circle Inspector of Baad and it was kept in Palekar's room in gramchavdi and Palekar used to have a key of his room in his bunch of keys. Shamba Naik had taken the key of his room twice or thrice at the time of the departmental inquiry. The lock which was first put to the big box had been changed and an altbgether a different lock had been put to it. This was noticed in February 1945 by Shamba. He opened the lock with one of the keys in the bunch of Palekar and the said key is Ex. 40. Then the lock Ex. 41 was put to the big box.

30. Subsequently, at the time of the departmental inquiry the original diaries maintained by the accused as the Circle Inspector were got produced and they ~~were~~ Exs. 17, 18 and 34 to 36 Exs. 17 and 18 are for the two fortnights of the month of March 1944. Ex. 17 purports to have been forwarded on December 21, 1944; while Ex. 18 purports to have been forwarded on March 10, 1944. Obviously the forwarding dates of these two diaries are absurd and wrong. From these wrong entries it is suggested by the prosecution that the accused is responsible for the fabrication of these diaries Now, the evidence of the two witnesses as discussed above does not connect the accused with the commission of the offence. Neither Palekar nor Shamba Naik has stated that the accused had opened the big box during the period commencing from December 1944 to May 1945. It is rather curious to find that Shamba Naik when he found the new lock put to the big box in February 1945 did not make a report to his superior officers. Further, there is a material discrepancy in the evidence of Shamba and Palekar on the point. According to Shamba the key with which he opened the new lock was in the bunch of Palekar since February 1945, while according to Palekar the new key was found in his bunch in May 1945 for the first time. Thus, the evidence of the two witnesses is contradictory and if at all the diaries might have been tampered with they must have been tampered with with the help of Shamba. Otherwise, there is no evidence as to how the accused had an access to the big box. Thus, there is no evidence worth the name to establish the guilt of fabrication of diaries by the accused.

31. Lastly, I am rather constrained to remark that the prosecution has been considerably handicapped in this case. In My opinion, it is not a false case launched against the accused as alleged by the defence.. If the case ends in an acquittal of the accused it is due to want of sufficient legal evidence. As already pointed out above the witnesses for the prosecution G.N.Hegde, A.J.Shaik, Habbu and Shamba are supporting the defence rather than the prosecution case. There is no substance in the defence contention that the witnesses being clerks are supporting the case launched by the department. The entry made by Mr. Bankapur in L.P.G.5 coupled with the subsequent conduct of the accused raises undoubtedly a grave suspicion against the accused. But, in my opinion, there is no sufficient legal evidence to base the conviction, especially when the direct testimony of the two witnesses Hegde and Shaik on the point of payment e to a messenger is false as pointed out above.

32. In this case the opinion of the assessors is unamimous. They are of opimion that the accused is not guilty of any of the charges with which he is charged. Further, they are of opinion that the payment of Rs.2000/- has not been proved to have been made to a duly authorised agent of the accused, disbelieving the evidence of G.N.Hegde and

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and A.D.Shaik. The reasons given by them are sound and agreeing with their unanimous opinion I find the accused not guilty of the offence giving him the benefit of doubt.

O R D E R.

The accused Bhujang Nagappa Naik is acquitted of the charge under sections 409, 193 and 477 of the Indian Penal Code and is discharged.

The bail-bond is cancelled.

18th July 1946

Sd. P.H. Gunjal.
Sessions Judge.

.....

True Copy,

Sd. . ...
Sheristedar,
Sessions Court, Kanara.

Opinion in the case of Imperator versus Bhujangnaik Nagappa Naik.

This is a case which should not have been committed to the Sessions. There is no doubt that Government has been defrauded to the extent of Rs.2000/ but the offence has not at all been brought home to the accused; and when I say so, I am deliberately putting it in a very colourless way. The prosecution case suffers from several infirmities. So many persons who were indispensable witnesses have not been examined; and it is not satisfactorily shown why they could not have been examined. It is somewhat shocking to learn that accounts of thousands of rupees were ordered to be -- reconstructed. It is hard to believe that on a requisition by the accused, a large sum of Rs.2000/- was sent with a messenger. The requisition is lost and the messenger though known is not examined. The whole thing looks like a cock and bull story. The case turns upon the appreciation of oral evidence and the three material witnesses, who are the mainstay of the prosecution case, have been disbelieved by the four assessors and the Judge, and in my opinion for very good reasons.

I shall be very unwilling to take up this case to the High Court, because I feel certain that not only will the appeal fail, but it may call for adverse remarks about the administration of the Grain Purchase System and its accounts and the unfairness of the prosecution in keeping back obvious witnesses. It would be best to close this dismal chapter with the Sessions Trial.

I do not advise an appeal

Bombay)
30th November 1946) Government Pleader, High Court.